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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 1216

THE GOSPEL ARMY, A CORPORATION,

Appellant,

vs.

THE CITY OF LOS ANGELES, BOARD OF SOCIAL SERVICE COMMISSIONERS, DEPARTMENT OF SOCIAL SERVICE, AND DAN O. HOYE, CITY CONTROLLER.

APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA.

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

RAY L. CHESEBRO,
City Attorney;
BOURKE JONES,
Assistant City Attorney;
WILBUR BASSETT,
Deputy City Attorney,
Counsel for Appellees.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 1216

THE GOSPEL ARMY, A CORPORATION,

Appellant,

vs.

THE CITY OF LOS ANGELES, A MUNICIPAL CORPORATION, THE BOARD OF SOCIAL SERVICE COMMISSIONERS, DEPARTMENT OF SOCIAL SERVICE, AND DAN O. HOYE, CITY CONTROLLER,

Appellees.

STATEMENT OF GROUNDS AGAINST THE JURISDICTION AND MOTION TO DISMISS APPEAL OR AFFIRM JUDGEMENT OF THE SUPREME COURT OF CALIFORNIA

Now come the City of Los Angeles, a municipal corporation, The Board of Social Service Commissioners, Department of Social Service and Dan O. Hoye, City Controller, and disclose and present the following matters and grounds against the jurisdiction on appeal to the Supreme Court of the United States, to wit:

I

The judgment and decision of the Supreme Court of California referred to by appellant is not a "final judgment

or decree" within the meaning of Sec. 237 (a) of the Judicial Code of the United States.

The order appealed from is "judgment reversed". (Appendix to jurisdictional statement, page 71.)

A reversal in California without direction to the lower court is not a final judgment for the purpose of appeal. *Mutual Orange Distributors* v. *Agricultural Prorate Commission*, 30 Fed. Supp., 937 (9 C.C.A.).

A state statute making a decision final is not determinative of finality as a test of right of appeal in this case. *Cole* v. *Violette*, 319 U. S. 581, 87 L. Ed. 1599.

Unless the State Supreme Court order leaves nothing but ministerial duties to the court below, the judgment is not final. *Department of Banking* v. *Pink*, 317 U. S. 264, 87 L. Ed. 254; *Market Street Railway* v. *Railroad Commission*, 89 Law Ed. Adv. Op. 788.

Appeal herein lies only from "a final judgment or decree." (Judicial Code, paragraph 237 (a), 28 U. S. C. A. Sec. 344.)

II

No decision upon any Federal question was necessary to the judgment appealed from.

The judgment of the trial court which was reversed provided that respondents "are hereby permanently restrained and enjoined from the further interference and threatened acts which would in any way prevent the free exercise of the religious liberty and freedom of worship of the said plaintiff."

This judgment is so vague and general that it was reversible on its face. It requires no decision upon any Federal question to determine its invalidity. Thus the Supreme Court of California has already said in a similar case "the contract is set forth in the complaint as Exhibit A, and the decree enjoins the appellant from doing any

act whatever which will in any manner interfere with the rights of the plaintiff under Exhibit A. The decree should be definite as to the things to be performed and to the act enjoined. To enjoin the appellant from doing any act which would in any manner interfere with the plaintiffs' rights under a said contract is too uncertain and indefinite to ever be enforced. The appellant is entitled to have the decree define his rights as well as the rights of the respondents, and to have it direct what specific act appellant is to do as well as what he is not to do." *Ellis* v. *Rademacher,* 125 Cal. 556, p. 559, 58 Pac. 178; *Byers* v. *Colonial Irrigation Co.,* 134 Cal. 553, 66 Pac. 732; *Gregory* v. *Blanchard,* 98 Cal. 311, 33 Pac. 199.

This being the law in California as elsewhere in this country, it was not necessary to determine any Federal question upon an appeal from this decree. Unless it appears that decision from a Federal question was necessary an appeal herein will be dismissed. *Honeyman* v. *Hanan,* 300 U. S. 14, 81 L. Ed. 476; *Southwestern Bell Telephone Co.* v. *State of Oklahoma,* 303 U. S. 206, 82 L. Ed. 751.

III

No Substantial Federal Question Is Involved in This Appeal

No substantial Federal question is involved. It is not sufficient to say that an asserted constitutional right has been abridged. There is no pretense of irreparable injury, and without such showing a mere allegation of breach is insufficient. This was clearly stated in the Circuit Court of Appeals for the Fourth Circuit, "we may assume that the enforcement of the ordinance against plaintiffs under the circumstances herein described would constitute a violation of their constitutional rights. *Murdock* v. *Commonwealth of Pa.* (319 U. S. 105), but it does not follow that plaintiffs are entitled to the injunction granted them

below. There was no showing of such irreparable injury as would warrant a court of equity to restrain prosecutions." *Walter W. Spence, Chief of Police*, v. *Andrew E. Cole*, 137 Fed. (2d) 71.

AND NOW upon the said grounds and matters hereinbefore set out, the said respondents pray the Supreme Court of the United States to dismiss the said appeal or to affirm the said judgment of the Supreme Court of the State of California.

Respectfully submitted,

RAY L. CHESEBRO,
City Attorney;
BOURKE JONES,
Assistant City Attorney;
WILBUR BASSETT,
Deputy City Attorney,
Counsel for Appellees.